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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75 - 1022

ALICE M. CALHOUN, Petitioner,

vs

RIVERSIDE RESEARCH INSTITUTE
and
COLUMBIA UNIVERSITY, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ALICE M. CALHOUN

Pro se for Petitioner

111-11 132nd Street
Jamaica, New York 11420

January, 1976

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Swan Land & Cattle Co. v Frank, 148 US 603, 13 S Ct 691 37 L Ed 577

Ex parte Skinner & Eddy Corp. 265 US 86, 44 S Ct 446 68 L Ed 912

Holker v Parker, 7 Cranch 436 3 L Ed 396

Hager v Thompson, 1 Black 80 17 L Ed 41

Hennessy v Bacon, 137 US 78, 11 S Ct 17, 34 L Ed 605

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner, Alice M. Calhoun, prays for a writ of certiorari to review an order of judgement of the United States Court of Appeals for the Second Circuit in this case.

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## OPINIONS BELOW

The Court of Appeals entered Judgements denying the reconsideration motion and a dismissal of the appeal on the following dates: October 17, 1975 denied motion for reconsideration of the dismissal. September 19, 1975 denied motion for assignment of counsel and dismissed the appeal. ( Appendix A, Page: 14 ).

The District Court entered a discontinuance on June 26, 1974 ( Appendix A, page 13).

The District Court entered and order denying a motion for a class action on May 18, 1972 ( Appendix A, page 13 ).

## JURISDICTION

The Court of Appeals entered judgements on October 17, and on September 19, 1975 denying a motion for reconsideration of the dismissal and the dismissal respectively.

The jurisdiction of this-Court is invoked under 28 USC1254 ( 1 ).

## QUESTIONS PRESENTED

1. Did Riverside Research Institute and Columbia University discriminate against Alice M. Calhoun between the years of March 15, 1965 and November 30, 1973. ( Did the respondents violate the petitioners Civil and/or Constitutional Rights)

QUESTIONS ( continued )

2.Did the District Court rule properly when it denied the motion for a class action in this matter ?

3. Did the District Court rule properly when it issued an order to discontinue the action on June 26, 1974 ?

4. Did the Court of Appeals rule properly when it dismissed the appeal and denied the motion for reconsideration ?

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. The First Amendment of the Constitution of the United States of America. ( Appendix B page )

II. The Fifth Amendment of the Constitution of the United States of America. ( Appendix B page )

III. The Fourteenth Amendment of the Constitution of the United States of America. ( Appendix B page )

IV. Title VII of the Civil Rights Act of 1964(Sect. 702 &703)

V. Executive Order Number 11246 of September 24, 1965

VI. New York State Constitution, Article 1, Section 11

VII. New York State Human Rights Law, paragraph 296

VIII. The Federal Rules Of Civil Procedure

Rules 11, 15, 16, 19, 23, 24, 26, 30, 33, 34, 41, 54, 58, 60, 62, 68,

## STATEMENT OF THE CASE

Alice M. Calhoun complained that she was denied a promotional opportunity at Riverside Research Institute because of her race. The New York State Division Of Human Rights , the Equal Employment Opportunity Commission and the Office Of Federal Contract Compliance upheld Mrs. Calhoun's complaint but all attempts to conciliate the dispute failed. An action was entered in the District Court for the Southern District of New York on June 21, 1971 .

The litigation in the District Court was loose, flambouyant, suspicious and irregular. The Federal Rules of Civil Procedure were disregarded and some record tampering was reported but the Court took no action.

Mrs. Calhoun was hired by the Electronics Research Laboratory of Columbia University on March 15, 1965. Mrs. Calhoun was assigned to the Computer Facility Group as a Computer Programmer.

By July 1967, Alice M. Calhoun was the senior programmer and third in line to become Group Leader of the Computer Facility Group. When the Group Leader, Sue Wallenstein and Alice Waldman, next in line to become Group Leader,

gave notice that they would be going on maternity leave it seemed that Mrs. Calhoun would assend to the position as the previous Group Leaders had done. Instead of promoting Mrs. Calhoun, she was transferred out of the Computer Facility Group and a Mr. Nicholas Gutfeld was transferred into the Computer Facility Group and he was made the new Group Leader. Mr. Gutfeld was less qualified than Mrs. Calhoun, had less seniority in the Laboratory and had no experience in the Computer Facility Group.

Mrs. Calhoun recalls that exactly the same thing happened in the dispatching office. When the supervisor of the dispatching office quit, a white person was transferred into the Group and made the Supervisor. All of the people in the office quit but the management continued this practice of not promoting non-white personnel.

Mrs. Calhoun and Mrs. Alice Waldman continued to program the AM RAD Data that was coming from M. I. T. Lincoln Laboratory. There was a need for supervision in the AM RAD Data project which consisted of Mrs. Calhoun and Mrs. Waldman along with the Data Library and a Dispatching Office. Instead of promoting either Mrs. Calhoun or Mrs. Waldman, a Mr. Eric Brodheim was given the additional dut-

ies of supervising the AM Rad Data project. Mr. Brodheim who was very limited in the knowledge of programming as well as in the knowlege of the AM RAD Data project because Mrs. Waldman and Mrs Calhoun were the only programmers at the Laboratory working these programs. Mr. Brodheim immediately informed his superiors that he needed some additional supervision in the AM RAD Data Reduction section and reccommended that Mrs. Calhoun be given a promotion because she was performing supervisory duties that were essential to the project. When he got no action from his immediate supervisor, he prepared a memorandum describing the duties that Mrs. Calhoun was performing with a reference to his previous request that she be promoted and compensated for the work that she was doing. Mrs. Calhoun was evaluated in the performance of the duties that she was performing and was awarded a merit salary increase along with an outstanding performance rating but no promotion.

On January 30, 1970, the promotion of a Miss Edna Freeman to Assistant Manager of the AM RAD Data Reduction section was a flagrant and discriminatory act that was just too much for Mrs. Calhoun to take. She complained that she was not being given an equal opportunity for promotional advancement.

After exhausting her remedy for redress within the Laboratory, she took her complaint to the New York State Division of Human Rights wherein there was a finding of " probable cause". The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance found that Mrs. Calhoun's complaint was valid yet the management refused to conciliate the dispute. The complaint was then referred to the Federal Court for a legal solution. The lawyers who represented the parties in the dispute began to compromise the clients interest for their own benefit. They first got a dismissal from the New York State Division of Human Rights without the knowledge or consent of the client.

Then on June 26, 1974, a trick was played on Mrs. Calhoun, where the lawyers along with the judge had Mrs. Calhoun come down to the District Court for the settlement of a legal dispute between the lawyers but ended up settling the action in a fraudulant manner. I am very positive of many of the behind the scenes connaivances that took place in this conspiracy.

Mrs. Calhoun prays that this Court will grant the review that we request in order that this gross injustice can be reversed and that the culprit can be brought to justice.

Mrs. Calhoun states that forgery, fraud, and deceit has been committed in this litigation which violates the U S criminal code. The Federal Rules of Civil Procedure has been grossly violated as well as the legal and judicial ethics of profession-conduct.

The District Court is in violation of Rule 41, 54(c) and 58 of the Federal Rules of Civil Procedure. The attorneys are in violation of Rule 11 of the F. R. C. P.

The judgement is contrary to Hobson v M'Arthur, as well as Swan Land & Cattle Co. v Frank. The act of the discontinuance denies the plaintiff the rights setforth in Ex parte Skinner & Eddy Corp. Mrs. Calhoun wishes to invoke Holker v Parker for the acts of her attorneys and she pleads Hager v Thompson and Hennessy v Bacon as her defense in the so call-settlement agreement.

Mrs. Calhoun wishes to invoke Greenwood v Peacock for the satisfaction of this Court's jurisdiction. She further charges that her First Amendment rights have been denied as well as those rights garanteed by the Fourth, Fifth and the Fourteenth Amendments.

The State of New York denied her equal protection of the law when it dismissed the complaint without upholding its

Human Rights Law. The judgement is in violation of 28 US 1331 and is contrary to the Supreme Court Decision i.e. for discrimination that involve back pay and compensation for punitive as well as personal injury.

The Court of Appeals erred when it granted a motion to dismiss " for lack of jurisdiction" ; there was not such a motion made in this action. It further denied the appellant the right to be heard and to make oral argument before the Court before it dismissed the appeal.

The petitioner ask this Court to grant her damages plus cost and to find the respondant guilty of violation of the Civil Rights Acts of 1964 and the Executive Order 11246 as well as the Constitution of the United States.

The petitioner ask this Court to order an accounting so that damages can be assessed in accord with the profits that the respondents have gained by this inexcusable act. The petitioner's professional career has been permanently damaged as a result of this most heinous conspiracy.

The petitioner ask this Court to be mindful of the gains that the respondant made over the years of their mis conduct. She also reminds this Court to consider her long sufferings caused by these acts.

## REASON TO GRANT CERTIORARI

A writ of certiorari should be granted because the Court of Appeals has decided a federal question in a way that is in conflict with applicable decisions of this Court. The decision is far departed from the accepted and usual course of judicial proceedings add are so far departed from reasonable thinking that this Court's power and supervision is necessary.

When the District Court failed to grant Mrs. Calhoun the back pay that was due her, it acted contrary to this Court's edit. When it granted Mrs. Calhoun less than the ten thousand dollar minimum damages, it again acted contrary to this tribunal's edit and violated 28 US 1331.

When the District Court did not account for the record tampering as reported by the plaintiff, it denied Mrs. Calhoun a fair and impartial adjudication of her complaint.

The Court of Appeals denied Mrs. Calhoun her right to be heard when it dismissed her appeal without allowing her request for oral argument. The Court of Appeals further violated Mrs. Calhoun's right to a fair and impartial adjudication when if failed to issue a cause for its dismissal of her appeal.

Mrs. Calhoun prays that this Court will undertake to right this gross injustice and solve this most heinious conspiracy.

# APPENDIX A
# RECORD
# OF
# COURT DECISION

RECORD OF COURT DECISIONS

United States District Court
Southern District of New York

May 18, 1972

Memorandum Opinion
#38500
Harold R. Tyler USDJ

The motion to maintain the action as a class action is denied upon determination that certain conditions precedent and other requirements of F. R. C. P. Rule 23 cannot be met in this case. It is so ordered.

---

June 26, 1974

71 Civ. 2734

This cause having duly come on to be heard before me and the attorneys for all parties having appeared and advised the Court that all claims asserted herein have been settled, it is

Ordered that the above entitled action be and hereby is discontinued without costs to either party.

Dated June 26, 1974

Whitman Knapp
United States District Judge

I hereby consent to the entry of this proposed order:

Michael H. Diamond
by Henry P. Baer
Attorney for Plaintiff

Freeman, Meade, Wasserman and Sharfman by
Richard M. Sharfman
Attorney for Defendant

SECOND CIRCUIT

September 19, 1975

Docket 75 - 7415

A motion having been made herein by appellant pro se for the assignment of counsel

Upon consideration thereof, it is

Ordered that said motion be and it hereby is DENIED; and it is further ORDERED That appellee's cross-motion to dismiss the appeal for lack of jurisdiction is granted .

Henry J. Friendly

William H. Timmons

Murray I. Gurfien
Circuit Judges

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October 17, 1975

A motion having been made herein by appellant pro se for reconsideration

Upon consideration thereof it is

Ordered that said motion be and it hereby is Denied .

Henry J. Friendly

William H. Timbers

Murray I. Gurfein
Circuit Judges

# APPENDIX B

# RECORD OF CASE LAW

a. On dismissal without considering the merits, such dismissal may be without prejudice. Hobson v M'Arthur, 16 Pet 182 10 L Ed 930

b. When a suit in equity is dismissed without a consideration of the merits, the dismissal should be without prejudice. Swan Land & Cattle Co. v Frank, 148 US 603, 13 S Ct 691 37 L Ed 577

c. At common law a plaintiff has the absolute right to discontinue or dismiss his suit at any stage of the proceedings prior to verdict or judgement, and the reason offered is immaterial. Ex parte Skinner & Eddy Corp. 265 US 86, 44 S Ct 446, 68 L Ed 912

a. A compromise made by an attorney at law acting merely as such, by which important interests of his client were unnecessarily sacrificed because of the attorney's misapprehension as to the facts, will be voided where no negligence can be imputed to the client. Holker v Parker, 7 Cranch 436, 3 L Ed 396

f. Where there is no unfairness, and all the facts are equally known to both sides, an adjustment by them is final and conclusive. Hager v Thompson, 1 Black, 80 17 L Ed 41 (Also see Clarke v White, 12 Pet 178) Annotated

 9 L Ed 1046

g. A compromise of a disputed claim, the parties dealing each other upon terms of equality, holding no relations of or confidence to each other, and each having knowledge, the opportunity to acquire knowledge, of every fact bearin upon the validity of their respective claims, ought not to overthrown, even if the court should be of opinion that the ty complaining of it surrendered rights that the law, if ap ed to, would have sustained. Hennessy v Bacon, 137 US 11 S Ct 17, 34 L Ed 605

Persons who are denied the rights guaranteed to them und federal law may vindicate these rights in appropriate case by various remedies in federal courts, such as direct review by the United States Supreme Court, obtaining an injunction or habeas corpus, bringing suit for damages under 42 USC 1983, or invoking criminal sanctions under 18 USC 242. Greenwood v Peacock. 384 US 808, 86 S Ct 1800 16 L Ed 2d 944

Submitted by:

ALICE M. CALHOUN
111-11 132nd Street
Jamaica, New York 11420
( Pro se counsel for petitioner )

# Constitutional And Statutory Provisions

## Amendments

(The first 10 Amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights")

### Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment 14

(Ratified July 9, 1868)

*Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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# TEXT OF FEDERAL LAWS, ORDERS, AND REGULATIONS

## Title VII of Civil Rights Act

*Following is the text of Title VII of the 1964 Civil Rights Act, as last amended by P.L. 92-261 eff. March 24, 1972, and P.L. 93-608, January 2, 1975.*

### DEFINITIONS

**Sec. 701.** For the purposes of this title—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers. (As amended by P.L. No. 92-261, eff. March 24, 1972.)

(b) The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers. (As amended by P.L. No. 92-261, eff. March 24, 1972.)

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person. (As amended by P.L. 92-261, eff. March 24, 1972.)

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of of such labor organization) is (A) twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter, and such labor organization—(As amended by P.L. No. 92-261, eff. March 24, 1972)

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. (As amended by P.L. 92-161, eff. March 24, 1972)

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity. (As amended by P.L. No. 92-261, eff. March 24, 1972)

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Island, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. (As amended by P.L. 92-261, eff. March 24, 1972)

**EXEMPTION**

**Sec. 702.** This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational insititution, or society of its activities. (As amended by P.L. 92-261, eff. March 24, 1972)



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**DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN**

**Sec. 703.** (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. (As amended by P.L. 92-261, eff. March 24, 1972)

(b) It shall be a unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor, organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution

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of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge an individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in differen locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin; nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid to employees of such employer if such differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938 as amended (29 USC 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or precentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or

other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. (As amended by P.L. 92-261, eff. March 24, 1972)

### OTHER UNLAWFUL EMPLOYMENT PRACTICES

**Sec. 704.** (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice, made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title. (As amended by P.L. No. 92-261, eff. March 24, 1972)

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion sex or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment. (As amended by P.L. No. 92-216, eff. March 24, 1972)

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**Sec. 705** (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the

performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title. (As amended by P.L. No. 92-261, eff. March 24, 1972)

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) The Commission shall at the middle and at the close of each fiscal year report to the Congress and to the President concerning the action it has taken, and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable. (As amended by P.L. 93-608, January 2, 1975.)

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent



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other than a government, governmental agency or political subdivision. (As amended by P.L. No. 92-261, eff. March 24, 1972)

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) All officers, agents, attorneys and employees of the Commission, including the members of the Commission, shall be subject to the provisions of section 9 of the act of August 2, 1939, as amended (Hatch Act), notwithstanding any exemption contained in such section.

## PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

**Sec. 706.** (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawawful employment practice as set forth in section 703 or 704 of this title.

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') within ten days and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the ex-

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piration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and

eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purpose of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may

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be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). (As amended by P.L. No. 92-261, eff. March 24, 1972)

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section the Commission may commence proceeding to compel compliance with such order. (As amended)

(j) Any civil action brought under this section and any proceedings brought under subsection (j) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code. (As amended by P.L. 92-261, eff. March 24, 1972)

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Sec. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice,

and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by

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a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act. (As last amended by P.L. No. 92-261, eff. March 24, 1972)

### EFFECT OF STATE LAWS

**Sec. 708.** Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

### INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

**Sec. 709.** (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commisssion in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State of locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship

may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a governmental agency or political subdivision, have jurisdiction to issue to such person an order requring him to comply.

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection. (As amended by P.L. 92-261, eff. March 24, 1972)

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Comder this section prior to the institution mission pursuant to its authority unof any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

### INVESTIGATORY POWERS

Sec. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply. (As amended by P.L. 92-261, eff. March 24, 1972)

### NOTICES TO BE POSTED

Sec. 711. (a) Every employer, employment agency and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

### VETERANS' PREFERENCE

Sec. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

### RULES AND REGULATIONS

Sec. 713. (a) The Commission shall

have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act of omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

### FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

**Sec. 714.** The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life. (As amended by P.L. 92-261, eff. March 24, 1972)

### SPECIAL STUDY BY SECRETARY OF LABOR

**Sec. 715.** There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. (As amended by P.L. No. 92-261, eff. March 24, 1972)

### EFFECTIVE DATE

**Sec. 716.** (a) This title shall become effective one year after the date of its enactment. (The effective date thus is July 2, 1965.)

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

## NON DISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

**Sec. 717.** (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semi-annual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complant of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance

so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government. (As amended by 92-261, eff. March 24, 1972)

### SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION AND SUSPENSION OF GOVERNMENT CONTRACTS

Sec. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan. (As added by P.L. 92-261, eff. March 24, 1972)

# E.O. 11246 on Nondiscrimination Under Federal Contracts

*Text of Executive Order 11246, signed by President Johnson September 24, 1965, as amended by Executive Order 11375, signed October 13, 1967. Amended Part I, effective November 12, 1967, was superseded by Executive Order 11478 (See 401:87). Part II was amended to add sex as prohibited basis of discrimination, effective October 13, 1968.*

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows.

## PART I—Nondiscrimination in Government Employment

ED. NOTE: Secs. 101-105, barring discrimination in federal employment on account of race, color, religion, sex, or national origin, were superseded by Executive Order 11478. These provisions called for affirmative-action programs for equal opportunity at the agency level under general supervision of the Civil Service Commission; establishment of complaint procedures at each agency with appeal to the Commission; and promulgation of regulations by CSC. (See 401:87.)

## PART II—Nondiscrimination in Employment by Government Contractors and Subcontractors

### SUBPART A—DUTIES OF THE SECRETARY OF LABOR

**Sec. 201.** The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

### SUBPART B—CONTRACTORS' AGREEMENTS

**Sec. 202.** Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secre-

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tary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contacting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous con-



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tract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers of providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

## SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

Sec. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of

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the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

Sec. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

## SUBPART D — SANCTIONS AND PENALTIES

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate

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proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

Sec. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

Sec. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

Sec. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

## SUBPART E — CERTIFICATES OF MERIT

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel train-

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ing, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

## PART III — Nondiscrimination Provisions in Federally Assisted Construction Contracts

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

Sec. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303 (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each

administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

**Sec. 304.** Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

## PART IV — Miscellaneous

**Sec. 401.** The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

**Sec. 402.** The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

**Sec. 403.** (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

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## 2. NEW YORK STATE CONSTITUTIONAL PROVISION AGAINST DISCRIMINATION

**"No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."**

(New York State Constitution, Article 1, Section 11, as adopted by Constitutional Convention of 1938 and approved by vote of the people, November 8, 1938.)

## 3. STATUTORY PROVISIONS CONCERNING UNLAWFUL INQUIRIES

The New York State Human Rights Law prohibits unlawful discriminatory practices and defines these practices, in part, as follows:

§ 296. Unlawful discriminatory practices.

1. It shall be an unlawful discriminatory practice:

* * *

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to age, race, creed, color, national origin or sex or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin or sex.

* * *

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

* * *

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

* * *

3. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

* * *

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

* * *

3-a. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire, or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five, or any intent to make any such limitation, specification or discrimination.

* * *

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the

employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

* * *

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

* * *

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

* * *

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

* * *

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof:

* * *

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing

accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

* * *

(e) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company or other financial institution or lender, doing business in the state, and if incorporated, regardless of whether incorporated under the laws of this state, the United States or any other jurisdiction, to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space, or any officer, agent or employee thereof:

* * *

(2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex.

* * *

12. Notwithstanding the provisions of subdivision one, one-a and three-a of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division) which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population. Any plan approved under this subdivision shall be in writing and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

# NEW YORK STATE HUMAN RIGHTS LAW

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ARTICLE 15

# HUMAN RIGHTS LAW

Section 290. Purposes of article.
291. Equality of opportunity a civil right.
292. Definitions.
293. Division of human rights.
294. General policies of division.
295. General powers and duties of division.
296. Unlawful discriminatory practices.
297. Procedure.
297-a. State human rights appeal board.
298. Judicial review and enforcement.
299. Penal provision.
300. Construction.
301. Separability.

§ 290. **Purposes of article.** 1. This article shall be known as the "Human Rights Law". Purposes

2. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights.

3. The legislature hereby finds and declares that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A division in the executive department is hereby created to encourage programs designed to insure that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state; to encourage and promote the development and execution by all persons within the state of such state programs; to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in educational institutions, in public services, in housing accomodations and in commercial space and to take other actions against discrimination as herein provided; and the division established hereunder is hereby given general jurisdiction and power for such purposes. Division created

§ 291. **Equality of opportunity a civil right.** 1. The opportunity to obtain employment without discrimination because of race, creed, sex, color or national origin is hereby recognized as and declared to be a civil right. Civil right

2. The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of race, creed, color or national origin, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.

§ 292. **Definitions.** When used in this article:

·on

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

·loyment ·cy

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

·or ·ization

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

·wful ·riminatory ·tice

4. The term "unlawful discriminatory practice" includes only those practices specified in section two hundred ninety-six of this article.

·loyer

5. The term "employer" does not include any employer with fewer than four persons in his employ.

·loyee

6. The term "employee" and this article do not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

·missioner

7. The term "commissioner" unless a different meaning clearly appears from the context, means the state commissioner of human rights; and the term "division" means the state division of human rights created by this article.

·ional origin

8. The term "national origin" shall, for the purposes of this article, include "ancestry."

·e of public ·mmodation

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold: ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospital, bath-houses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty

parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants. Such term shall not include public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility, supported in whole or in part by public funds or by contributions solicited from the general public; or any institution, club or place of accommodation which is in its nature distinctly private.

Exclusions

No institution, club, organization or place of accommodation which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements shall be deemed a private exhibition within the meaning of this section.

State contest

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.

Housing accommodation

11. The term "publicly-assisted housing accommodations" shall include all housing accommodations within the state of New York in

Publicly-assisted housing

(a) public housing,

(b) housing operated by housing companies under the supervision of the commissioner of housing,

(c) housing constructed after July first, nineteen hundred fifty, within the state of New York

(1) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,

(3) which is constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance,

(d) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(e) housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodations is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (2) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

Multiple dwelling

12. The term "multiple dwelling", as herein used, means a dwelling which is occupied, as a rule, for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.

Family

The term "family", as used herein, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder", "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

Commercial space

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling,

garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.

Real estate broker

14. The term "real estate broker" means any person, firm or corporation who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

Real estate salesman

15. The term "real estate saleman" means a person employed by a licensed real estate broker to list for sale, sell or offer for sale, at auction or otherwise, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rent for the use of real estate for or in behalf of such real estate broker.

Necessary party

16. The term "necessary party" means any person who has such an interest in the subject matter of a proceeding under this article, or whose rights are so involved, that no complete and effective disposition can be made without his participation in the proceeding;

Parties to proceeding

17. The term "parties to the proceeding" means the complainant, respondent, necessary parties and persons permitted to intervene as parties in a proceeding with respect to a complaint filed under this article;

Hearing examiner

18. The term "hearing examiner" means an employee of the division who shall be assigned for stated periods to no other work than the conduct of hearings under this article;

Discrimination

19. The term "discrimination" shall include segregation and separation.

Division of human rights

§ 293. **Division of human rights.** 1. There is hereby created in the executive department a division of human rights hereinafter in this article called the division. The head of such division shall

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be a commissioner† hereinafter in this article called the commissioner, who shall be appointed by the governor, by and with the advice and consent of the senate and shall hold office at the pleasure of the governor. The commissioner shall be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

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2. The commissioner may establish, consolidate, reorganize or abolish such bureaus and other organizational units within the division as he determines to be necessary for efficient operation.

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§ 294. **General policies of division.** The division shall formulate policies to effectuate the purposes of this article and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes.

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§ 295. **General powers and duties of division.** The division by and through the commissioner or his duly authorized officer or employee, shall have the following functions, powers and duties:

1. To establish and maintain its principal office, and such other offices within the state as it may deem necessary.

2. To function at any place within the state.

3. To appoint such officers, attorneys, clerks and other employees and agents, consultants and special committees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

4. To obtain upon request and utilize the services of all governmental departments and agencies.

5. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this article, and the policies and practice of the division in connection therewith.

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6. (a) To receive, investigate and pass upon complaints alleging violations of this article.

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(b) Upon its own motion, to test and investigate and to make, sign and file complaints alleging violations of this article and to initiate investigations and studies to carry out the purposes of this article.

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7. To hold hearings, to provide where appropriate for cross-interrogatories, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the division. The division may make rules as to the issuance of subpoenas which may be issued by the division at any stage of any investigation or proceeding before it.

† See Section 169 of the Executive Law, as last amended, re salary payable to the commissioner.

In any such investigation or hearing, the commissioner, or an officer duly designated by the commissioner to conduct such investigation or hearing, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.*

Advisory councils

8. To create such advisory councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article and of section eleven of article one of the constitution of this state, and the division may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of age, race, creed, color or national origin, and make recommendations to the division for the development of policies and procedures in general and in specific instances. The advisory councils also shall disseminate information about the division's activities to organizations and individuals in their localities. Such advisory councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the division may make provision for technical and clerical assistance to such councils and for the expenses of such assistance.

Publicizing article

9. To develop human rights plans and policies for the state and assist in their execution and to make investigations and studies appropriate to effectuate this article and to issue such publications and such results of investigations and research as in its judgment will tend to inform persons of the rights assured and remedies provided under this article, to promote good-will and minimize or eliminate discrimination because of age, race, creed, color, sex or national origin.

Reports

10. To render each year to the governor and to the legislature a full written report of all its activities and of its recommendations.

Tensions

11. To inquire into incidents of and conditions which may lead to tension and conflict among racial, religious and nationality groups and to take such action within the authority granted by law to the division, as may be designed to alleviate such conditions, tension and conflict;

Technical assistance

12. To furnish any person with such technical assistance as the division deems appropriate to further compliance with the purposes or provisions of this article;

Local agencies

13. To promote the creation of human rights agencies by counties, cities, villages or towns in circumstances the division deems appropriate.

Gifts, grants to

14. To accept, with the approval of the governor, as agent of the state, any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article;

15. To adopt an official seal.

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* See page 26 for Section 50.20 of the Criminal Procedure Law.

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16. To have concurrent jurisdiction with the New York city commission on human rights over the administration and enforcement of title C of chapter one of the administrative code of the city of New York.*

§ 296. **Unlawful discriminatory practices.** 1. It shall be an unlawful discriminatory practice:

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(a) For an employer, because of the age, race, creed, color, national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

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(b) For an employment agency to discriminate against any individual because of his age, race, creed, color, national origin or sex, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

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nizations

(c) For a labor organization, because of the age, race, creed, color, national origin or sex of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

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(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin or sex.

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(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

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1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

* See page 28 for New York City Administrative Code, Chap. 1, Title C.

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review; Criteria

(b) To deny to or withhold from any person because of his race, creed, color, national origin or sex the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program; Admission

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin or sex; Terms

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification. Advertisements, inquiries

2. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin or sex of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin or sex, or that the patronage or custom thereat of any person of or purporting to be of any particular race, creed, color, national origin or sex is unwelcome, objectionable or not acceptable, desired or solicited. Places of public accommodation

Nothing in this subdivision shall be construed to prevent the barring of any person, because of the sex of such person, from places of public accommodations, resort or amusement if the division grants an exemption based on bona fide considerations of public policy. Exemptions

This subdivision shall not apply to the rental of rooms in a housing accommodation which restricts such rental to individuals of one sex.

3. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations: Publicly-assisted housing

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(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color or national origin of such person or persons.

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(b) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

uiries, record-

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

Housing

3. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color or national origin of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.*

3-a. It shall be an unlawful discriminatory practice:

discrimination in employment

(a) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire, or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

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(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five, or any intent to make any such limitation, specification or discrimination.

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(c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

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* See Section 2 of Chapter 493 of the Laws of 1970 which amended Chapter 1070 of the Laws of 1969, through which this subdivision 3 was added, as follows: "None of the amendments made by this act shall apply to the city of New York".

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

Physical disability

Retirement plans

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, by reason of his race, color, religion or national origin.

Non-sectarian education institution

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

Housing accommodations

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin or sex of such person or persons.

Rental

(2) To discriminate against any person because of his race, creed, color, national origin or sex in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

Terms

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

Advertisements, inquiries

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation.

Exemptions

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rcial space

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

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(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such land or commercial space because of the race, creed, color, national origin or sex of such person or persons.

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(2) To discriminate against any person because of his race, creed, color, national origin or sex in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or in the furnishing of facilities or services in connection therewith.

.vertisements,
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(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

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(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any
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housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin or sex of such person or persons, or to represent that any housing accommodation, land or commercial space is not available, for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin or sex of such person or persons.

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(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing cccommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination.

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(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin

or sex of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

Lenders

(e) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company or other financial institution or lender, doing business in the state, and if incorporated, regardless of whether incorporated under the laws of this state, the United States or any other jurisdiction, to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space, or any officer, agent or employee thereof:

(1) To discriminate against any such applicant or applicants because of the race, creed, color, national origin or sex of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such financial assistance.

Records, inquiries

(2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex.

Aiding, abetting, coercing

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

Retaliation

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

Violation of conciliation agreements

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section two hundred ninety-seven of this article to violate the terms of such agreement.

Volunteer firemen

9. (a) It shall be an unlawful discriminatory practice for any fire department or fire company therein, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firemen, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, to deny to any individual membership in any volunteer fire department or fire company therein, or to expel or discrim-

inate against any volunteer member of a fire department or fire company therein, because of the race, creed, color or national origin of such individual.

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(b) Upon a complaint to the division, as provided for under subdivision one of section two hundred ninety-seven of this article, the board of fire commissioners shall be made a party respondent and in the event the commissioner finds that an unlawful discriminatory practice has been engaged in, the board of fire commissioners shall be included in any order, under subdivision four of section two hundred ninety-seven of this article, to be served on any or all respondents requiring such respondent or respondents to cease and desist from such unlawful discriminatory practice and to take affirmative action. The board of fire commissioners shall have the duty and power to appoint as a volunteer fireman, notwithstanding any other statute or provision of law or by-law of any volunteer fire company, any individual whom the commissioner has determined to be the subject of an unlawful discriminatory practice under the subdivision.

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10. (a) It shall be an unlawful discriminatory practice for any employer to prohibit, prevent or disqualify any person from, or otherwise to discriminate against any person in, obtaining or holding employment, because of his observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his religion.

(b) Except as may be required in an emergency or where his personal presence is indispensable to the orderly transaction of business, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home, provided however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

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(c) This subdivision shall not be construed to apply to any position dealing with health or safety where the person holding such position must be available for duty whenever needed, or to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a requirement of his religion, observes such day or days or portion thereof as his sabbath or other holy day. In the case of any employer other than the state, any of its political subdivisions or any school district, this subdivision shall not apply where the uni-

form application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer. In any proceeding in which the applicability of this subdivision is in issue, the burden of proof shall be upon the employer. If any question shall arise whether a particular position or class of positions is excepted from this subdivision by this paragraph, such question may be referred in writing by any party claimed to be aggrieved, in the case of any position of employment by the state or any of its political subdivisions, except by any school district, to the civil service commission, in the case of any position of employment by any school district, to the commissioner of education, who shall determine such question and in the case of any other employer, a party claiming to be aggrieved may file a complaint with the division pursuant to this article. Any such determination by the civil service commission shall be reviewable in the manner provided by article seventy-eight of the civil practice law and rules and any such determination by the commissioner of education shall be reviewable in the manner and to the same extent as other determinations of the commissioner under section three hundred ten of the education law.*

Exemptions of religious organizations

11. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

Promotion of minority employment

12. Notwithstanding the provisions of subdivisions one, one-a and three-a of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the

* Statement of legislative purpose. It has long been the policy of this state that every individual is guaranteed the right to obtain employment free from discrimination because of his religion. It is the finding of the legislature that, in accordance with this policy, no individual should be prohibited, prevented or disqualified from, or discriminated against in obtaining or holding public employment because of his observance of any particular day or days or portion thereof as his sabbath or other holy day as a requirement of his religion. Questions have recently been raised, however, as to whether the provisions of the law against discrimination and other laws are sufficiently clear to protect the interests of individuals holding or seeking public employment who observe any particular day or days or portion thereof as a sabbath or other holy day as a requirement of their religion. This act is therefore enacted to clarify the existence of this right and to provide specific assurance of it, and should in no way be construed to limit the rights assured by the provisions of the law against discrimination or any other law, rule or regulation. It is the intention of the legislature that this act shall be construed liberally to effectuate the purposes for which it is enacted. (Section 1 of Chap. 667 of Laws of 1967.)

division) which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population. Any plan approved under this subdivision shall be in writing and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

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§ 297. **Procedure.** 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney-at-law, make, sign and file with the division a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the division.

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The industrial commissioner or the attorney-general or the division upon its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the attorney-general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

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2. After the filing of any complaint, the division shall promptly serve a copy thereof upon the respondent and all persons it deems to be necessary parties, and make prompt investigation in connection therewith. Within fifteen days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent.

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3.a. If in the judgment of the division the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the division and the respondent, including a provision for the entry in the supreme court in any county in the judicial district where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accomodation, land or commercial space specified in the complaint is located, of a consent decree embodying the terms of the conciliation agreement. The division shall not disclose what has transpired in the course of such endeavors.

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b. If the respondent and the division agree upon conciliation terms the division shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within fifteen days after its service upon him, the division shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement he shall serve a specification of his objections upon the division within such period. Unless such objections are met or withdrawn within ten days after service thereof, the division shall notice the complaint for hearing. Terms of conciliation. Complainant's objections.

c. Notwithstanding any other provisions of this section, the division may, where it finds the terms of a conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant. If, however, the division finds that the complainant's objections to the proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undesirable, the division may in its unreviewable discretion, at any time prior to a hearing before a hearing examiner dismiss the complaint on the grounds of administrative convenience. Dismissal.

d. If a conciliation agreement is entered into, the division shall serve a copy of the order embodying such agreement upon all parties to the proceeding. Service of conciliation agreement.

4.a. Within sixty days after a complaint is filed, or within thirty days after the board has reversed and remanded an order of the division dismissing a complaint for lack of jurisdiction or for want of probable cause, unless the division has dismissed the complaint or issued an order stating the terms of a conciliation agreement not objected to by the complainant, the division shall cause to be issued and served a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint and appear at a public hearing before a hearing examiner at a time not less than five nor more than fifteen days after such service and at a place to be fixed by the division and specified in such notice. The place of any such hearing shall be the office of the division or such other place as may be designated by the division. The case in support of the complaint shall be presented by one of the attorneys or agents of the division and, at the option of the complainant, by his attorney. With the consent of the division, the case in support of the complainant may be presented solely by his attorney. No person who shall have previously made the investigation, engaged in a conciliation proceeding or caused the notice to be issued shall act as a hearing examiner in such case. Attempts at conciliation shall not be received in evidence. At lease two business days prior to the hearing the respondent shall, and any necessary party may, file a written answer to the complaint, sworn to subject to the penalties of perjury, with the division and serve a copy upon all other parties to the proceeding. A respondent who has filed an answer, or whose default in answering has been set aside for good cause shown may appear at such hearing in person or otherwise, with or without coun- Public hearing. Presentation of case. Answer.

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sel, cross examine witnesses and the complainant and submit testimony. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross examine witnesses. The hearing examiner may in his discretion permit any person who has a substantial personal interest to intervene as a party, and may require that necessary parties not already parties be joined. The division or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent and any other party shall have like power to amend his answer. The hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and a record made.

b. If the respondent fails to answer the complaint, the hearing examiner designated to conduct the hearing may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside only for good cause shown upon equitable terms and conditions.

c. Within twenty days after such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, [sic]* awarding of compensatory damages to the person aggrieved by such practice, as, in the judgment of the division, will effectuate the purposes of this article; (iv) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three** of section two hundred ninety-six of this article; and including a requirement for report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said complaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of state, if he has issued a license to the respondent, and such other public officers as the division deems proper. A copy of

* The numeral (iii) was deleted by Chap. 359 of the Laws of 1969.
** See note page 12.

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any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph shall be delivered to the attorney general, to the secretary of state if he has issued a license to the respondent and to such other public officers as the division deems proper. Second complaints; Licensing agencies

d. The division shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Rules of practice

5. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice. Time of filing of complaint

6. At any time after the filing of a complaint alleging an unlawful discriminatory practice under this article, if the division determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commissioner may enter in such proceeding, the commissioner may apply to the supreme court in any county where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or if the complaint alleges an unlawful discriminatory practice under subdivision three or paragraphs (a), (b) or (c) of subdivision five of section two hundred ninety-six of this article, where the housing accommodation, land or commercial space specified in the complaint is located, for an order requiring the respondents or any of them to show cause why they should not be enjoined from doing or procuring to be done such act. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual an order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper. In the event that the complaint is dismissed by final order of the division or a court, the respondent shall be entitled to such remedies as are prescribed in section twenty-five hundred twelve of the civil practice law and rules.† Temporary injunction of actions thwarting order

7. Not later than one year from the date of a concilation agreement or an order issued under this section, and at any other times in its discretion, the division shall investigate whether the respondent is complying with the terms of such agreement or order. Upon a finding of non-compliance, the division shall take appropriate action to assure compliance. Compliance investigation

8. No officer, agent or employee of the division shall make public with respect to a particular person without his consent information from reports obtained by the division except as necessary to the conduct of a proceeding under this section. Disclosure

† See page 26 for Section 2512 of the Civil Practice Law & Rules.

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9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages and such other remedies as may be appropriate, unless such person had filed a complaint hereunder or with any local commission on human rights, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, such person shall maintain all rights to bring suit as if no complaint had been filed. No

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person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section.

man Rights
peal Board

§ 297-a. **State human rights appeal board.** 1. There is hereby created in the executive department a state human rights appeal board, in this article referred to as the board, consisting of

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four members appointed by the governor, by and with the advice and consent of the senate. No more than three members shall be

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from the same political party.

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2. One of the members shall be designated by the governor as chairman and he shall serve as the chief executive officer of the board. The chairman of the board shall have the power and the duty to promote the efficient transaction of the business of the board and to appoint such employees and agents as he may deem necessary, fix their compensation within the limitations provided by law and prescribe their duties.

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3. The terms of office of the present members of the board shall expire on June thirtieth, nineteen hundred seventy-one. Thereafter, the term of a member shall be six years, provided, however, that of those members first appointed on or after the effective date of this act, two shall be appointed for terms of four years and two for terms of six years, from July first, nineteen hundred seventy-one. A member chosen to fill a vacancy otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he is to succeed.

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4. Appeals shall be heard by one member of the board and a majority vote of the members of the entire board shall be necessary for a determination of such appeal.

5. Each member shall be an attorney, admitted to practice before the supreme court and shall serve on a full-time basis. The chairman and each member shall receive an annual salary to be fixed within the amount available therefor by appropriation, and shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. A member may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

6. The board shall have power, and it shall be its duty: Powers, duties

a. To meet and function at any place within the state;

b. To adopt, promulgate, amend and rescind suitable procedural rules with respect to the functioning of the board and the setting of time limits for the hearing of appeals and the rendering of decisions thereon;

c. To hear appeals by any party to any proceeding before the division from all orders of the commissioner issued pursuant to this article, provided such appeals are commenced by filing with the board of a notice of appeal within fifteen days after service of such order;

d. To receive briefs, and, where the board deems it advisable, to hear oral argument with respect to such appeals;

e. To require the submission to it from the division of an original or certified copy of the entire record on which any order appealed from is based, which record need not be reproduced;

f. To stay the effectiveness of any order of the commissioner pending the determination of an appeal in proper cases and on such terms and conditions as the board may require.

7. The board may affirm, remand or reverse any order of the division or remand the matter to the division for further proceedings in whole, or with respect to any part thereof, or with respect to any party, provided however that the board shall limit its review to whether the order of the division is: Limited review

a. in conformity with the constitution and the laws of the state and the United States;

b. within the division's statutory jurisdiction or authority;

c. made in accordance with procedures required by law or established by appropriate rules or regulations of the division;

d. supported by substantial evidence on the whole record; or

e. not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The division shall be bound by the decision of the board except to the extent such decision is reversed or otherwise modified by a court of competent jurisdiction pursuant to this article.

§ 298. **Judicial review and enforcement.** Any complainant, respondent or other person aggrieved by any order of the board may obtain judicial review thereof, and the division may obtain an order of court for its enforcement and for the enforcement of any order of the commissioner which has not been appealed to the board, in a proceeding as provided in this section. Such proceeding shall be brought in the appellate division of the supreme court of the state in the judicial department embracing the county wherein the unlawful discriminatory practice which is the subject of the order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together Venue Petition

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-1022

ALICE M. CALHOUN,
Petitioner,

vs.

RIVERSIDE RESEARCH INSTITUTE
and COLUMBIA UNIVERSITY
Respondents.

# RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

James A. Shanman, Esq.
551 Fifth Avenue
New York, NY 10017

TABLE OF AUTHORITIES

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1. 28 U.S.C. §2101(c) . . . . . 6

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

2. 28 U.S.C. §2107 . . . . . 7

Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

The district court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.

This section shall not apply to bankruptcy matters or other proceedings under Title 11.

3. Rule 4, Fed.R.App.P. . . . . 7

(a) Appeals in Civil Cases. In a civil case (including a civil action which involves an admiralty or maritime claim and a proceeding in bankruptcy or a controversy arising therein) in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment or order appealed from;

but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Federal Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is entered in the civil docket.

Upon a showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

## Questions Presented

1. Should a petition for certiorari, intended to bring before this Court for review an order in a civil action, be dismissed as untimely where the petition was not filed within 90 days after entry of the order sought to be reviewed and petitioner never sought any extension of time?

2. Should this Court review an order of the United States Court of Appeals for the Second Circuit, dismissing an appeal for lack of jurisdiction where the appeal was from a voluntary discontinuance after settlement and the notice of appeal was not filed for more than one year after entry of the order discontinuing the action?

## Statement of the Case

### The Order for which review is sought.

Petitioner seeks review of an order entered September 19, 1975, by the United States Court of Appeals for the Second Circuit, dismissing for lack of jurisdiction her appeal, for which notice was filed July 15, 1975, from her voluntary discontinuance, in June 1974, of an action after settlement. On October 17, 1975, the Court of Appeals denied petitioner's motion for reconsideration of its dismissal. (Both orders are set out at page 14 of Appendix A to the petition.)

The petition for certiorari was docketed January 19, 1975, more than 90 days after entry of the Court of Appeals' order dismissing the appeal and its order denying reconsideration.

The proceedings below.

Petitioner commenced this action in the United States District Court for the Southern District of New York, for an injunction and to recover damages for alleged discrimination against her in employment by respondent Riverside Research Institute (the action was voluntarily discontinued as against Columbia University). Following some four years of pendency during which the parties conducted and concluded extensive discovery proceedings, petitioner agreed voluntarily to discontinue the action in exchange for respondent's payment of $5,900, which sum represented her out-of-pocket disbursements. On June 26, 1974, the District Court (Hon. Whitman Knapp), in the presence of petitioner, her husband and her attorney, inquired of petitioner, and

the petitioner answered, regarding the settlement agreement as follows:

"THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

"MRS. CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

"THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

"MRS. CALHOUN: Yes.

"THE COURT: That is not taken care of by this settlement?

"MRS. CALHOUN: I do."*

Accordingly, the District Court "so ordered" a stipulation discontinuing the

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*A copy of the transcript of Judge Knapp's settlement conference has been lodged with the Court.

action. On July 1, 1974, respondent delivered a check for $5,900, which check petitioner cashed.

On July 15, 1975, more than one year after entry of the stipulation and order, petitioner filed a notice of appeal from the order. Thereafter, respondent moved in the Court of Appeals to dismiss the appeal for lack of jurisdiction on the grounds that the appeal was untimely and that no appeal lay from an order to which petitioner had consented. It is the Court of Appeals' order, entered September 19, 1975, granting that motion that petitioner seeks to have this Court review. Petitioner's subsequent motion to the Court of Appeals for reconsideration was denied in its order entered October 17, 1975.

## Argument

### POINT I

THE PETITION FOR CERTIORARI SHOULD BE DISMISSED AS UNTIMELY, SINCE IT WAS NOT FILED WITHIN NINETY DAYS FROM THE ENTRY OF THE ORDER SOUGHT TO BE REVIEWED.

The order dismissing petitioner's appeal for lack of jurisdiction was entered September 19, 1975, and its order denying reconsideration was entered October 17, 1975. The petition for certiorari was docketed January 19, 1976 - ninety-four days after the October 17, 1975 order. Thus the petition was not filed timely, according to 28 U.S.C. §2101 and, there having been no motion to extend the time for filing, the Supreme Court is without jurisdiction to entertain the petition.

## POINT II

### THE PETITION SHOULD BE DISMISSED BECAUSE THERE ARE NO QUESTIONS MERITING REVIEW BY THIS COURT

The petition for certiorari seeks review of orders of the Court of Appeals dismissing for lack of jurisdiction petitioner's appeal from the District Court's "so ordering" of a stipulation of discontinuance and denying her application for reconsideration.

The Court of Appeals' order dismissing the appeal for lack of jurisdiction was ineluctably correct, as the appeal was untimely (28 U.S.C. §2107; Rule 4(a), Federal Rules of Appellate Procedure) and petitioner had consented to the District Court's order and accepted the settlement payment, and was, therefore, not aggrieved (see Martin Marietta Corp. v. F.T.C.,

376 F.2d 430, 433-34 (7th Cir.), cert. denied, 389 U.S. 923 (1967); Kelly's Trust v. Commissioner, 168 F.2d 198, 199 (2d Cir. 1948); Thonen v. Jenkins, 455 F.2d 977 (4th Cir. 1972)). There are no legal questions presented by the petition, much less any important issues of federal law. Thus, even if there were jurisdiction to entertain the petition for certiorari, there would be no reason to do so.

## Conclusion

For the foregoing reasons, the petition should be dismissed.

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